

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant(s): Dupont et al.
App. No.: 09/833,314
Conf. No.: 4353
Filed: April 10, 2001
Title: CANNED FILLED PET FOOD
Art Unit: 1761
Examiner: Steven L. Weinstein
Docket No.: 115808-239

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on June 8, 2004. This Appeal is taken from the Final Rejection dated February 9, 2004.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on Appeal is Nestec S.A., by virtue of an Assignment executed on May 28, 29, June 5 and 12, 2001, and recorded at the United States Patent and Trademark Office at Reel 011952, Frame 0470.

II. RELATED APPEALS AND INTERFERENCES

Appellants do not believe there are any appeals or interferences which will directly affect or be directly affected by or have any bearing on the Board's decision with respect to the above-identified Appeal.

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III. STATUS OF CLAIMS

Claims 1-17 are pending in this application. A copy of appealed Claims 1-17 is attached in the Appendix. In the Final Office Action dated February 9, 2004, Claims 1-17 stand rejected under 35 U.S.C. § 103 as being unpatentable over *May* (WO 98/05219) in view of *Quaker Oats* (GB 1327351) and *Bechtel* (US 3,738,847), further in view of *Gutmann* (US 2,421,199), *Froebel*

(GB 2,194,125), *Zitin* (US 2,937,095), *Dodge* (US 3,385,712) and *Vickers* (GB 341,760), and further in view of *Ohba* (EP 769252), *Henkel* (GB 1486634), *Mandanas* (WO 94/26606), *Routh* (2,344,901), *McMahon* (GB 1583351), *Erras* (EP 675046), *Hillebrand* (Australia 50797/96), *QP Corp. I* (JP 59-31677) and *QP Corp. II* (JP 61-100174). The Patent Office now maintains the obviousness rejection in view of 17 references.

IV. STATUS OF AMENDMENTS

No amendments to the claims are pending.

V. SUMMARY OF INVENTION

The present invention is directed to pet foods. More specifically, the present invention relates to canned pet food products which contain layers of different appearance and texture and processes for producing same. (Specification, page 1, lines 3-5.)

The invention provides improved canned pet food products and methods of producing same. A canned pet food product is provided that has a base layer with solid food pieces in a gravy. The gravy makes up about 20% to about 40% by weight of the base layer. The canned pet food products of the present invention further include an upper layer including a substantially solid foodstuff which is about 20% to about 80% by weight of the pet food product wherein the base layer and the upper layer remain stratified before serving and the upper layer supports the base layer upon inversion. (Specification, page 2, lines 10-20.)

The invention also provides improved methods of manufacturing canned pet food products that have at least two layers. The process includes filling a base layer with solid food pieces in a gravy into a can. The gravy has a viscosity in the range of about 350 to about 1000 centipoise and forms about 20% to about 40% of the weight of the base layer. The process further includes filling an upper layer into the can wherein the upper layer includes a settable foodstuff that has a viscosity in the range of about 2500 to about 4000 centipoise and, upon cooling, forming a substantially solid foodstuff that includes about 20% to about 80% by weight of the upper and base layers and wherein the base layer and the upper layer remain stratified in the can and the upper layer supports the base layer upon inversion. (Specification, p. 3, lines 12-27.)

Often, after opening a can of pet food, the consumer shakes the contents out into the bowl or dish of the pet. Therefore, what was the base layer becomes the upper layer in the bowl or dish of the pet. The consumer is therefore presented with an attractive topping of solid food pieces in a gravy above a clearly defined layer of a substantially solid foodstuff. (Specification, page 2, lines 18-22.)

Preferably, the solid food pieces in the base layer are a formulated emulsion product having the striated appearance of natural meat. The formulated emulsion product preferably includes about 65% to about 95% by weight of a meat material and about 5% to about 35% by weight of a proteinaeous material. If desired, the formulated emulsion product may be in the form of flakes. (Specification, page 2, lines 23-27.)

The gravy preferably includes water and about 2% to about 8% by weight of starch, for example, about 4% by weight of starch. The starch is preferably a heat-sensitive starch such that its viscosity increasing properties are reduced after being heated. In particular, it is preferred that the gravy has an initial viscosity in the range of about 350 to about 1000 centipoise prior to retorting of the can but a lower viscosity after retorting. (Specification, page 2, lines 28-33.)

The base layer preferably has a moisture content of about 60% to about 70% by weight. In an embodiment, the base layer has a moisture content of about 62% to about 64% by weight, for example, about 63% by weight. (Specification, p. 3, lines 1-3.) The substantially solid foodstuff is preferably a gelled meatloaf, cooked rice, cooked noodles, or aspic, or mixtures thereof. The aspic may contain food pieces, such as cooked vegetable pieces. (Specification, page 3, lines 10-12.)

To produce the pet food product, a mixture of solid food pieces in a gravy and a settable foodstuff must be separately prepared. The mixture of solid food pieces in a gravy may be prepared by simply mixing together solid pieces of meat or other material, or both, and a gravy. The meat material may be any suitable meat source, for example, muscular or skeletal meat, meat by-products or a mixture of meat and meat by-products. The meat material may be in the form of chunks or may be in the form of flakes. However, if a meat material is used, it is preferred that the solid food pieces are a formulated emulsion product. Solid pieces of other material may also be used, such as cooked rice grains, pasta or noodles, vegetable pieces, and the like. (Specification, page 4, lines 3-10.)

The gravy or sauce is produced from water, starch and suitable flavoring agents and should include about 20% to about 40% by weight of the mixture of solid pieces in gravy. The amount of starch used is sufficient to provide a gravy with a viscosity of about 350 to about 1000 centipoise, such as up to about 8% by weight of the starch. The starch is preferably such that its viscosity increasing properties break down during retorting of the canned pet food. (Specification, page 6, lines 6-12.)

The substantially solid foodstuff can be a gelled meatloaf prepared by emulsifying a suitable meat material to produce a meat emulsion. The meat material may be any suitable meat source. Suitable gelling agents, thickening agents, and other ingredients, such as sugar, salt, spices, seasonings, and minerals may also be added to the meat emulsion. (Specification, p. 6, lines 23-34.) Alternatively, the substantially solid foodstuff may be made of an aspic, cooked rice, or cooked noodles. (Specification, page 7, lines 10-26.)

The mixture of the solid food pieces and gravy and the settable foodstuff is then fed to suitable filling machines. For example, one machine is used for filling the solid food pieces in gravy, and another machine is used for filling the settable foodstuff. A metered amount of the mixture of the solid food pieces in gravy is fed into each can entering the pocket filler in a defined layer that includes about 20% to about 80% of the volume or weight of the product. For example, the layer may make up about 30% to about 70% of the volume or weight of the product. The cans are then fed to a separate filling machine for filling the settable foodstuff. (Specification, page 8, lines 7-13.)

Due to the density and viscosity of the mixture of the solid food pieces and gravy and the density and viscosity of the settable foodstuff, clear and distinct layers are formed in the can despite the spinning. These layers remain clear and distinct during the seaming of the cans. After it has cooled, the settable foodstuff will form a firm, substantially solid foodstuff. (Specification, page 8, lines 13-18.)

The cans are then retorted under conditions of sufficient heat to effect commercial sterilization in the normal manner. During the retorting operation, the starch in the gravy preferably breaks down such that the previously viscous gravy takes on the appearance of a thin, running sauce. (Specification, page 8, lines 19-23.)

The cans produced by the process contain a product, which includes a lower layer of solid pieces of food in a thin sauce, and an upper layer of a substantially solid foodstuff. The layers

are clear and distinct and the product is visually attractive once removed from the can. (Specification, page 8, lines 24-27.)

Specific examples of the canned pet food according to an embodiment of the present invention were also provided. (Specification pages 8-10.)

VI. ISSUES

The issue on Appeal is as follows:

Would the canned pet food products and processes for producing same as defined by Claims 1-17 have been obvious at the time of the invention to one of ordinary skill in the art under 35 U.S.C. § 103(a) over *May* (WO 98/05219) in view of *Quaker Oats* (GB 1327351) and *Bechtel* (US 3,738,847), further in view of *Gutmann* (US 2,421,199), *Froebel* (GB 2,194,125), *Zitin* (US 2,937,095), *Dodge* (US 3,385,712) and *Vickers* (GB 341,760), and further in view of *Ohba* (EP 769252), *Henkel* (GB 1486634), *Mandanas* (WO 94/26606), *Routh* (2,344,901), *McMahon* (GB 1583351), *Erras* (EP 675046), *Hillebrand* (Australia 50797/96), *QP Corp. I* (JP 59-31677) and *QP Corp. II* (JP 61-100174)?

VII. GROUPING OF CLAIMS

Claims 1, 3-5, 7, 8, and 15-17 stand or fall together. Claims 2 and 11-14 stand or fall together. Independent Claim 6 stands or falls on its own. Claims 9 and 10 stand or fall together.

VIII. ARGUMENT

A. The Applicable Law

35 U.S.C. §103(a) states that:

A patent may not be obtained.... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

In making a determination that an invention is obvious, the Patent Office has the initial burden of establishing a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S. P.Q.2d 1955, 1956 (Fed. Cir. 1993). "If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Appellant is entitled to grant of the

patent.” *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1444 (Fed. Cir. 1992). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference or references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 837 F.2d 1071, 5, USPQ2d 1596 (Fed. Cir. 1988). Second there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986) Finally, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ, 580 (CCPA 1974).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. M.P.E.P. 2142 A statement of a rejection that includes a large number of rejections must explain with reasonable specificity at least one rejection, otherwise the examiner fails to make a *prima facie* case of obviousness. *Ex parte Blanc*, 13 USPQ2d 1383 (Bd. Pat. App. & Inter. 1989)(Rejection based on nine references which included at least 40 prior art rejections without explaining any one rejection with reasonable specificity was reversed as procedurally failing to establish a *prima facie* case of obviousness. Moreover, a statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. M.P.E.P. 2143.01

In the present case, the Patent Office has failed to establish a *prima facie* case of obviousness because no objective reason for combining the teachings of the references in such a manner as to obtain the present invention has been provided nor is such a reason apparent. In short, Appellant submits that there is no reason for the combination.

B. The Claims Have Not Been Interpreted Properly

Appellants submit that the claims have not been interpreted properly. In this regard, on page 2 of the Office Action dated February 9, 2004 the Patent Office states:

All of Appellants remarks filed on 10/7/03 have been fully and carefully considered but are not found to be convincing. As a point of information, on page 3 of the amendment, it is urged that both the outer and inner layers extend from the lower end to the upper end of the canned pet food. The claimed [sic] only recite the lower end to the upper end. The claims do not specify whether the recited ends are the ends of the food product or ends of the can. The claims do not even recite whether these ends are relative or exact; that is, whether the two faces extend exactly in the same direction. The claims use the term tubular but this term is somewhat relative as well.

Independent Claims 1, 2, and 6 contain the preamble, “a canned pet food product having an upper end and a lower end.” The “product” comprises a tubular phase . . . which extends from the lower end to the upper end and includes an edible source of carbohydrate and proteins. Clearly the ends are not ends of the can because the can itself could not include an edible source of carbohydrate and proteins. With respect to the term “ends” the claims state that there is an upper end and a lower end. Reference to “ends” in the remainder of the claim is to the ends of the food product which are the only ends defined in independent Claims 1, 2, and 6. Applicant respectfully submits that no other conclusion is reasonable.

C. Rejection of the Properly Interpreted Claims Under 103 is not proper

1. The Canned Pet Food Features of the Claimed Invention

Of the pending claims, Claims 1, 2, 6 and 9 are the sole independent claims. Claims 1, 2 and 6 each relate to a canned pet food product that has an upper end and a lower end; and Claim 9 relates to a process for producing a canned pet food product. The canned pet food product defined in Claim 1 includes an outer tubular phase which is substantially solid and which extends from the lower end to the upper end and includes an edible source of carbohydrate and protein. The food product also has an inner phase that extends from the lower end to the upper end and includes an edible source of carbohydrate and protein. The inner phase has an appearance that is different from the outer phase and extends within the outer phase.

Independent Claim 2 further defines the product as obtainable by a process that includes filling the outer phase into a can; forming a bore into the outer phase for providing a tubular outer phase; filling the inner phase into the bore of the tubular outer phase; sealing the can; and retorting the sealed can.

Independent Claim 6 includes the limitations of Claim 1 and further includes an outer, tubular phase that extends from the lower end to the upper end that contains a substantially solid, thermally gelled mixture of carbohydrate and protein; and an inner phase which extends from the lower end to the upper end. The inner phase is in the form of chunks of a formulated emulsion product in gravy and has an appearance different from the outer phase and extends within the outer phase.

The process defined in Claim 9 includes the steps of filling into a can an outer phase that has an edible source of carbohydrate and protein; forming a bore into the outer phase for providing a tubular outer phase; filling an inner phase that has an edible source of carbohydrate and protein into the bore of the tubular outer phase. Claim 9 also requires that the inner phase has an appearance different from the outer phase in addition to sealing the can and retorting the sealed can.

Appellants recognized the need for canned pet food products having new and interesting appearances to stimulate consumer interest. See, Specification, page 2, lines 5-6. The pet food product, and processes for making it, have an attractive appearance formed by two or more discrete phases of different appearances, one within the other. Since the phases are substantially discrete, the product does not have the homogeneous appearance of conventional pet foods. Further, the pet food product of the invention is more suitable for packaging in taller cans in which the height of the can is at least as large as the diameter of the can because it is more easily removed from these cans than previously known products. See, Specification, page 2, lines 15-19.

2. The Cited References are Deficient with Respect to the Canned Pet Food Features of the Claimed Invention

Appellants submit that the cited art fails to disclose or suggest the claimed invention. As indicated in the Office Action dated November 14, 2002, the primary reference, *May*, fails to disclose the outer, tubular phase features required by the claimed invention. In fact, *May* discloses clearly defined upper and base layers such that, after opening the can and dispensing the pet food, what was the base layer becomes the upper layer (See, *May*, page 2, lines 20-25) rather than vertical layering as in the present invention.

The canned pet food of Appellants' invention has the advantage of being suitable for use in larger cans where the height of the can is at least as large as the diameter of the can. See, Specification, page 2, lines 1-19. In taller cans filled with a product like *May's*, the upper and

base layers would be more difficult to shake out into the pet's bowl or dish. Based on at least these reasons, *May* is deficient with respect to the claimed invention.

Appellants submit that the rejection is unsustainable because it fails to even remotely supply an objective reason for combining them with *May* in a way that would provide the present invention. The following comments provide additional reasons why the cited references cannot properly be combined with *May* to support the present rejection.

The Patent Office relies on *Quaker Oats* and *Bechtel* in support of the deficiencies of *May* with respect to the outer and inner phases of the claimed invention. The primary focus of these references relates to a pet food of hash type that contains a center core of eggs. *Quaker Oats*, col. 1, lines 12-15; and *Bechtel*, col. 1, lines 34-36. But, nowhere do these references provide that the egg core extends from the top to the bottom of the can as do the inner and outer phases of the present invention. See, Figs. 1-8 of *Quaker Oats* and *Bechtel*. Consequently, these references do not remedy the deficiencies of *May*.

Ohba relates to vertically and horizontally packed foods containing two or more packed food products. Similarly, *McMahon* discloses vertically packed foods with two liquid food products. Neither reference discloses an outer tubular phase which extends from the lower end to the upper end and an inner phase which extends from the lower end to the upper end extending within the outer phase. Thus, neither reference can remedy the deficiencies of *May*.

Further, the Patent Office has cited five additional references, namely *Gutmann*, *Froebel*, *Zitin*, *Dodge* and *Vickers*, in support of *May*. None of these references even relates to canned products, and all but one do not even relate to pet food products, as required by the claimed invention.

Gutmann discloses a method of preserving eggs, particularly to a method in which the separated white and yokes of eggs are preserved in coagulated or hard-boiled condition. In this regard, the main object of *Gutmann* is to convert the eggs into a condition in which they can be easily and safely shipped and stored for an unlimited period of time. See, *Gutmann*, column 1, lines 1-8.

Froebel discloses dog treats which are primarily semi-moist products that are co-extruded and have a relatively hard outer skin, and thus are unsuitable for canning. See, *Froebel*, Examples 1-3. *Froebel* distinguishes different categories of pet food, most notably dry, wet and semi-moist as disclosed on page 1. With respect to canned pet foods, *Froebel* discloses various

disadvantages, and further suggests that canned products are “unsuitable for use as treats.” See, *Froebel*, page 1, line 56-57.

Zitin discloses a cheese core surrounded by meat encased in a casing. Col. 1, lines 15-19. The product is prepared by inserting a molding in a casing not a can with a liquid meat product, cooking the meat product, removing the mold and pouring molten cheese into the center and allowing it to solidify. See, *Zitin*, cols. 1 and 2. With respect to Claim 1, *Zitin* fails to disclose a canned product, or a tubular phase, or an inner phase extending from the lower end to the upper end. With respect to Claim 2, *Zitin* also fails to disclose filling the outer phase into a can, sealing a can and retorting the sealed can. With respect to Claim 6 *Zitin* also fails to disclose an outer phase that includes a substantially solid, thermally gelled mixture of carbohydrate and protein. Lastly, method Claim 9 of Appellants’ invention is completely unrelated to *Zitin*. In addition to being unrelated, one skilled in the art would not be inclined to modify the horizontal arrangement (i.e., upper and base layers) of the *May* canned food product based on the teachings of *Zitin* directed to a vertical arrangement in a casing. In fact, such a combination would frustrate the teaching of *May* that after opening the can and dispensing the pet food, what was the base layer becomes the upper layer. See, *May*, page 2, lines 20-25. Thus, *May* teaches away from the combination.

Dodge relates to cooked egg rolls and unlike Appellants’ canned invention is wrapped being completely enclosed in a flexible, synthetic plastic. See, *Dodge*, col. 2, lines 29-34. The synthetic plastic outer wrapper can be either initially tube like of a selected cross-section, or in the form of a strip that is formed into a tube like form of a selected cross-section adjacent the extrusion nozzle. See, *Dodge*, col. 4, lines 4-7.

Moreover, like *Zitin*, *Dodge* relates to a food product with a vertical layer arrangement. Indeed, in *Dodge*’s egg roll structure, the outer layer does not extend from the top end to the bottom end (see, *Dodge*, Figs. 1 and 2). This is due to packaging constraints such that the egg yolk core can be seen in addition to the egg white portion (i.e., albumen) of the egg roll. In this regard, the primary purpose of *Dodge* is to produce a hard-cooked egg roll packaged in film which would represent enough convenience for both residential and commercial use (see, *Dodge*, col. 1, lines 32-42). As with *Zitin*, there is no motivation to combine or modify *May* with *Dodge* to obtain Appellants’ invention.

Vickers relates to meat rolls (i.e., butchers meat, such as beef, veal, etc.) rather than canned pet food products, as required by the claimed invention (see, *Vickers*, col. 1, lines 11-16). The meat roll combines course particles and finer size particles in visually separate phases (see, *Vickers*, Figs. 1 and 2) which is said to improve taste (see *Vickers* at col. 1, line 53 to col. 2, line 63). There is no motivation to combine *Vickers* with *May*, where, in *May*, parallel superimposed layers are formed in contrast to an annular-type configuration disclosed in *Vickers*.

Further, Appellants believe that the Patent Office has improperly relied on the remaining references, alone or in any hypothetical combination, to further remedy the deficiencies of *May*. The Patent Office appears to rely on these references in support of the position that the outer, tubular features of the claimed invention are allegedly an obvious matter of choice and/or design. Some of these references are from unrelated arts and do not even relate to food products, let alone pet food products. For example, *Henkel* merely relates to a cosmetic; *Mandanas*, like *Henkel*, has nothing to do with food, particularly pet foods, but merely relates to dispensing a viscous paste from containers, such as squeezable tubes; *Routh* merely relates to ice cream and products thereof; *Errass* merely relates to a condiment product that is dispensed from a tube; and the *QP Corp.* references relate to peanut butter and products thereof. Appellants submit that these references are from unrelated arts and are not properly combinable with the primary reference and have no relevance with respect to the specific limitations of the canned pet food product and methods thereof as defined in the claimed invention.

To arrive at the claimed invention, it is respectfully submitted that the Patent Office has impermissibly used hindsight to piece together the cited art and has selectively picked and chosen teachings of each of the references in an attempt to explain what the claimed invention discloses. The Court of Appeals for the Federal Circuit has criticized this motivation to combine analysis as being “hindsight reconstructive” because the motivation to combine the references was first disclosed in the present invention. *In re O’Farrell*, 853 F.2d 894, 902-903 (Fed. Cir. 1988), the number of references relied on by the Patent Office to support the present rejection is evidence by itself that the invention is not obvious.

Further, the principal reference is deficient with respect to the specific features of the claimed invention, particularly with respect to a canned pet food product with outer and inner tubular phase features as claimed. With respect to the secondary references, Appellants believe that these references are deficient as well and none of the cited references provides any

motivation for a combination that would render the invention obvious. Perhaps for this reason, no objective reason for any such combination was given in the Office Action and a *prima facie* case of obviousness has not been made out. Indeed, a number of these references do not even relate to pet food products, let alone canned pet food products, and even some do not even relate to food products.

Accordingly, Appellants respectfully request that the rejection of Claims 1 – 17 under 35 U.S.C. § 103 be reversed.

IX. CONCLUSION

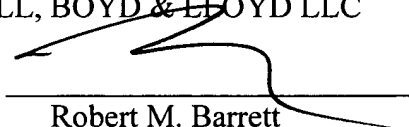
Based on at least these reasons, Appellants believe that the claimed invention is distinguishable over the cited art. Therefore, Appellants respectfully submit that the cited art, even if combinable, fails to render obvious the claimed invention.

Accordingly, Appellants respectfully request that the obviousness rejection be withdrawn. For this reason, the Appellants respectfully submit that the rejection of Claims 1, 2, 6, and 9 under 35 U.S.C. 103 are an error in law and in fact and should, therefore, be reversed by this board.

Respectfully submitted,

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BY



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Dated: September 7, 2004

APPENDIX

PENDING CLAIMS OF U.S. PATENT NO. 09/833,314

1. A canned pet food product having an upper end and a lower end, the product comprising:

an outer, tubular phase which is substantially solid and which extends from the lower end to the upper end and which includes an edible source of carbohydrate and proteins; and

an inner phase which extends from the lower end to the upper end and including an edible source of carbohydrate and protein; the inner phase having an appearance different from the outer phase and extending within the outer phase.

2. A canned pet food product having an upper end and a lower end, the product comprising:

an outer, tubular phase which is substantially solid and which extends from the lower end to the upper end and which includes an edible source of carbohydrate and protein; and

an inner phase which extends from the lower end to the upper end and including an edible source of carbohydrate and protein; the inner phase having an appearance different from the outer phase;

the product obtainable by a process comprising:

filling the outer phase into a can;

forming a bore into the outer phase for providing a tubular outer phase;

filling the inner phase into the bore of the tubular outer phase;

sealing the can; and

retorting the sealed can.

3. The canned pet food product according to claim 1 in which the outer phase is a thermally gelled mixture.

4. The canned pet food product according to claim 1 in which the inner phase comprises chunks of a formulated emulsion product in a gravy.

5. The canned pet food product according to claim 1 in which the outer phase comprises about 25% to about 75% by volume of the product and the inner phase comprises about 25% to about 75% by volume of the product.

6. A canned pet food product having an upper end and a lower end, the product comprising:

an outer, tubular phase which extends from the lower end to the upper end and which includes a substantially solid, thermally gelled mixture of carbohydrate and protein; and

an inner phase which extends from the lower end to the upper end and which is in the form of chunks of a formulated emulsion product in a gravy; the inner phase having an appearance different from the outer phase and extending within the outer phase.

7. The canned pet food product according to claim 1 in which the product has a height at least as large as its diameter.

8. The canned pet food product according to claim 1 in which the phases each have a moisture content of about 70% to about 85% by weight.

9. A process for producing a canned pet food product, the process comprising:
filling into a can an outer phase including an edible source of carbohydrate and protein;
forming a bore into the outer phase for providing a tubular outer phase;
filling an inner phase including an edible source of carbohydrate and protein into the bore of the tubular outer phase, the inner phase having an appearance different from the outer phase;
sealing the can; and
retorting the sealed can.

10. A process according to claim 9 in which the phases each have a viscosity of about 1500 cp to about 3500 cp when filled into the can.

11. The canned pet food product according to claim 2 in which the outer phase is a thermally gelled mixture.

12. The canned pet food product according to claim 2 in which the inner phase comprises chunks of a formulated emulsion product in a gravy.

13. The canned pet food product according to claim 2 in which the outer phase comprises about 25% to about 75% by volume of the product and the inner phase comprises about 25% to about 75% by volume of the product.


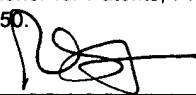
14. The canned pet food product according to claim 2 in which the product has a height at least as large as its diameter.

15. The canned pet food product according to claim 1 in which the phases each have a moisture content of about 70% to about 85% by weight.

16. The canned pet food product according to claim 1 in which the product has a height at least as large as its diameter.

17. The canned pet food product according to claim 1 in which the phases each have a moisture content of about 70% to about 85% by weight.

IFW AF/18

TRANSMITTAL OF APPEAL BRIEF (Large Entity)			Docket No. 115808-239
In Re Application Of: DuPont et al.			
Serial No. 09/833,314	Filing Date April 10, 2001	Examiner S. Weinstein	Group Art Unit 1761
Invention: CANNED FILLED PET FOOD			
<p style="text-align: center;"><u>TO THE COMMISSIONER FOR PATENTS:</u></p> <p>Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on June 8, 2004</p> <p>The fee for filing this Appeal Brief is: \$330.00</p> <p><input checked="" type="checkbox"/> A check in the amount of the fee is enclosed.</p> <p><input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 02-1818</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 100px;"><div style="text-align: center;"> _____ <i>Signature</i></div><div style="text-align: right;">Dated: <u>September 7, 2004</u></div></div> <div style="margin-top: 20px;">Robert M. Barrett (30,142) Attorneys for Applicants BELL, BOYD & LLOYD LLC P.O. Box 1135 Chicago, Illinois 60690-1135</div>			
CC:		<div style="border: 1px solid black; padding: 5px;"><p>I certify that this document and fee is being deposited on <u>9/7/2004</u> with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p><div style="text-align: center;"> _____ <i>Signature of Person Mailing Correspondence</i></div><div style="text-align: center;">Renee Street <i>Typed or Printed Name of Person Mailing Correspondence</i></div></div>	